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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,148	03/29/2004	Gary W. James	METZ 2 00011	2979
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FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115				
EXAMINER				
ING, MATTHEW W				
ART UNIT		PAPER NUMBER		
3637				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/812,148

Applicant(s)

JAMES ET AL.

Examiner

MATTHEW W. ING

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 6, 9 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 9 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the circular openings on the first, second, third, & fourth flanges (claim 1) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 5-6, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (3,168,365) in view of Snoke (6,152,552), Gutner (4,189,796), Young (3,677,202), & Vargo (4,553,725).
4. Evans teach(es) the structure substantially as claimed, including a cabinet (10) with opposite first (12) and second (13) side walls interconnected by a rear third wall (11, 11'); a base wall (not shown but considered to be inherent in a cabinet structure); a removable shelf (20) with a planar surface (25) and first, second, third, & fourth flanges (21-24) depending from ends of said planar surface; and aligned support members (17') punched out of and extending from the rear third wall such that openings are formed adjacent thereto (see Fig. 12; col. 3, lines 24-30), the support members including first legs extending perpendicular to the wall and second legs extending perpendicular to the first legs and spaced parallel to the wall; the flanges of the shelf being received between the walls of the cabinet and the legs of the support members to secure the shelf in place.
5. The only difference between Evans and the invention as claimed is that Evans fail(s) to teach an aligned first & second support members respectively punched out of and extending from the first & second side walls of the cabinet; support members with straight first and second legs, or hemispherical dimples received in openings in the shelf flanges; wherein the dimples each have rounded edges; wherein the second legs each include first & second linear portions and a rounded portion extending between said first and second linear portions; and wherein said openings are each circular & extend completely through the flanges, and capable of receiving the rounded edges of a respective dimple.

6. Snoke, however, teaches a cabinet (10) having wall components (26) forming a rear wall and opposing side walls (see Fig. 2; col. 3, lines 9–11); a base wall (28); and a removable shelf (30) with a planar surface and flanges (76) with openings (40) therein; the side and rear walls of the cabinet having aligned support members (44) punched out and extending therefrom such that openings are formed adjacent thereto (see Figs. 15, 16); the flanges of the shelf being received between the walls of the cabinet and legs of the support members to secure the shelf in place.

7. Additionally, Gutner teaches a support structure (see Figs. 2–4) having an L-shaped support member (18) engaging a flange (13); the support member being punched out of and extending from a plate (14) such that an opening (19) is formed through the plate; the support member including a straight first leg perpendicular to the plate and a straight second leg perpendicular to the first leg and spaced parallel to the plate (see Fig. 4), the second leg including a substantially hemispherical dimple (20) extending towards the plate opening; and the flange including a circular opening (21) dimensioned to receive the support member dimple; and the second leg including first & second linear portions (Fig. 3).

8. Additionally, Vargo teaches a hemispherical dimple (94) received in an opening (88) in a shelf flange (86); wherein the dimple has rounded edges (see Fig. 1); and wherein said opening is extends completely (Figs. 3–4) through the flange, and capable of receiving the rounded edges of a respective dimple (Figs. 3–4). Although the opening (88) of Vargo is not explicitly described as being "circular"; it is noted that Vargo additionally teaches circular openings (34). As such, to make the opening (88) of Vargo circular is viewed as being an obvious design consideration, depending on the desired needs of the person constructing the opening (e.g., intended use of the opening, aesthetic considerations, compactness, ease of manufacture, etc.).

9. Additionally, Young teaches rounding a portion extending between first & second linear portions. See Fig. 4.

10. Whereas Evans thus teaches a cabinet upon which the claimed side wall support members can be seen as an improvement; and whereas Snoke teaches a comparable cabinet that was improved in the same way as claimed, *i.e.*, having support members punched out of both side and rear walls to support a shelf; it therefore would have been obvious to one of ordinary skill in the art to apply the known improvement of Snoke in the same way to a cabinet as taught by Evans in order to obtain the predictable result of a cabinet with support members punched out of the rear wall and the side walls; and whereas the flange & L-shaped support members of both Gutner & Evans are both equivalent alternative structures for accomplishing similar purposes, it therefore would have been obvious to one of ordinary skill in the art to substitute the known flange and dimpled L-shaped support member of Gutner for the flange and curved L-shaped support member of Evans, since the results of such a substitution would have been predictable; and whereas the dimple & opening of both Gutner & Vargo are both equivalent alternative structures for accomplishing similar purposes, it therefore would have been obvious to one of ordinary skill in the art to substitute the known dimple & opening of Vargo for each of the dimples & openings of Evans as modified by Snoke & Gutner, since the results of such a substitution would have been predictable; and it would have been obvious to one of ordinary skill in the art to provide the support members of Evans as modified by Snoke, Gutner, & Vargo with rounded upper edges, as taught by Young, in order to facilitate assembly of the cabinet; and to reduce the probability of physical harm to a user via the elimination of sharp corners; thereby providing the structure substantially as claimed.

11. Regarding claim 1, Vargo teaches the inclusion of circular openings (Figs. 3-4) upon opposed, adjacent, perpendicular flanges (84, 86). Whereas mere duplication of the essential working parts of a device has been held to involve only routine skill in the art; it therefore would have been obvious to include circular openings upon each of the four opposed, perpendicular flanges of Evans as modified, in order to accommodate the dimples thereof; and in order to reduce the weight thereof; and in order to increase the flexibility of the positioning of said shelves; thereby providing the structure substantially as claimed.

12. Regarding claim 5, Young teaches a shelf support structure (see Figs. 2, 4) having support members (25) punched out of and extending from walls (23), the support members having rounded upper edges (35; see Fig. 4) to ease assembly of the system (col. 2, lines 42-45).

13. Regarding claims 6, 9 and 14, the support members of Evans and Gutner are considered lances, Evans teaches a cabinet fabricated from metal (col. 2, lines 11-13), and Evans further teaches a support wall (45) disposed between the first side wall and the second side wall in a first direction and between the removable shelf and the base wall in a second direction.

Response to Arguments

14. Applicant's arguments filed 7/13/09 have been fully considered but they are not persuasive.

15. Applicant's arguments have been addressed in the prior art rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW W. ING whose telephone number is (571)272-6536. The examiner can normally be reached on Monday through Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWI
14 September 2009
/José V. Chen/
Primary Examiner, Art Unit 3637